

MINUTES
MICHIGAN STATE TRANSPORTATION COMMISSION MEETING
September 29, 2005
Lansing, Michigan

Meeting noticed in accordance with Open Meetings Act, Public Act 267 of 1976.

Present: Ted Wahby, Chairman
 Linda Miller Atkinson, Vice Chairwoman
 Robert Bender, Commissioner
 Maureen Miller Brosnan, Commissioner
 Vincent J. Brennan, Commissioner
 James R. Rosendall, Commissioner

Also Present: Gloria J. Jeff, Director
 Kirk Steudle, Chief Deputy Director
 Larry Tibbits, Chief Operations Officer
 Leon Hank, Chief Administrative Officer
 Frank E. Kelley, Commission Advisor
 Marneta Griffin, Executive Assistant
 Jerry Jones, Commission Auditor
 Raymond Howd, MDOT Assistant Attorney General's Office
 John Friend, Bureau Director, Highway Delivery
 John Polasek, Bureau Director, Highway Development
 Myron Frierson, Bureau Director, Finance and Administration
 Ron DeCook, Director, Office of Governmental Affairs
 Tim Hoeffner, Administrator, Intermodal Policy
 Susan Mortel, Bureau Director, Transportation Planning
 Rob Abent, Bureau Director, Multi-Modal Transportation

A list of those people who attended the meeting is attached to the official minutes.

Chairman Wahby called the meeting to order at 9:00 a.m. in the Bureau of Aeronautics Auditorium in Lansing, Michigan.

I. COMMISSION BUSINESS

Commission Minutes

Chairman entertained a motion for approval of the minutes of the State Transportation Commission meeting of August 25, 2005.

Moved by Commissioner Brosnan, with support from Commissioner Brennan, to approve the minutes of the Commission meeting of August 25, 2005. MOTION CARRIED.

II. **SPECIAL PRESENTATION**

Multi-Modal Transportation Funding – Rob Abent, Bureau Director, Multi-Modal Transportation Services Bureau (MMTSB)

Mr. Abent introduced members of his staff: Melvin Williams (Freight and Safety Services), Sharon Edgar (Passenger Transportation), Pauline Misjak (Aviation Services), and Rick Hammond (Airports).

The purpose of this presentation is to describe MDOT's Multi-Modal Transportation Program investments, describe federal, state and local funding sources associated with the Multi-Modal programs, discuss the nuances and challenges presented in preserving/enhancing revenue sources, and support the STC's understanding of multi-modal portions of MDOT's FY 2006 Transportation Program and Five Year Program.

The MMTSB administers grants to local agencies for capital improvements of locally-owned infrastructure, and operating assistance for locally and privately owned services. We also regulate, permit and inspect agencies, operations and infrastructure.

Programs and Funding Sources

Major activities and functions include: Aviation (Airports and Aviation Services Divisions), Local Bus Transit (Passenger Transportation Division), Intercity Bus and Rail Passenger (Passenger Transportation Division and Rail Passenger Section), Marine and Port (Passenger Transportation Division, and Freight Safety and Services Division), Rail Freight (Freight Safety and Services Division).

Aviation

Aviation investment programs include the Airport Improvement Program (centers on capital grants for improvements), air service activities, and all weather airport access (maintenance of equipment and installation of equipment). Aviation support programs involve air transport service for state employees and state agencies, airport licensing (inspections at airports and heliports, aircraft registration, and licensing of flight schools and aircraft dealers), Aviation Safety and Education Program (pilot safety programs, teacher workshops, and airport manager workshops). Aviation funding sources include Federal Aviation Funds through the FAA Airport Improvement Program (user fees and general funds). Funding levels are based on Vision 100, Century of Aviation Reauthorization Act. Michigan received this as a block grant. Typically the federal funds fund 95% of project cost--state and locals units split the 5% match. This provides funding at 94 of the State's 238 public use airports. The other 144 airports are also eligible for funding through a state and local program. On the State side, activities are funded through the State Aeronautics Fund (aviation fuel taxes, licenses and permits, such as aircraft registration fees, and other revenue). The legislature and administration have augmented this funding at the State level with the Airport Safety and Protection (ASAP) program bond revenues. This is a \$60 million bond authorization which was approved in FY 2002 and ends in December 2007. Local funds contribute to the match.

Local Bus Transit

Under local bus transit investment programs there are eight separate Federal and State programs. The 2 most visible are the Local Bus Operating (on the ground funds for operation of transit agencies), and Capital Match. These provide capital and/or operating assistance to 116 transit providers in all 83 of Michigan counties. Transit support activities include contract and payment distribution, sub recipient monitoring, and state bus contracts. Many support activities were eliminated with the FY2005 staff reductions. At the Federal level the funding level is provided for in SAFETEA-LU. There are FTA federal formula apportionments to MDOT, and typically congressional earmarks directly to MDOT or managed by MDOT on behalf of local agencies. The FTA apportions about 80% of federal transit funds directly to transit agencies; however, MDOT is not involved. On the State side our activities are funded through the Comprehensive Transportation Fund (CTF).

Intercity Bus and Rail Passenger

Intercity investment programs were actively engaged with both intercity bus and passenger rail service (Amtrak). We subsidize intercity bus service in the Upper Peninsula and Northern Lower Peninsula (routes that would not otherwise be available if the State did not intervene). Amtrak service is legislatively mandated in this state. Two runs are subsidized—Port Huron to Chicago (Bluewater Service), and Grand Rapids to Chicago (Pere Marquette Service). There is also a corridor from Detroit to Chicago (Wolverine Service). We actively engage in bus and rail terminals, and motor coach replacements. A number of things are done in support of these programs, such as limo and charter bus regulation, high speed rail development, and commuter and regional rail service. The funding sources on the Federal side include intercity bus set-aside from federal Section 5311 non-urban formula apportionment (based on SAFETEA-LU), and rail passenger earmarks or special project funding as available. At the State level, activities are primarily funded through CTF, and the intercity bus loan fund as described in annual boilerplate language.

Marine and Port

The department is mandated by law to provide administrative funding to the Detroit Wayne County Port Authority (DWCPA) (\$500,000 per year—roughly 1/3 of their administrative costs). We also provide capital grants to public ferry systems. It is important to note that public ferries also receive local bus operating assistance. In most years there are no federal funds for marine and port unless Congressional earmarks are provided. The State provides funds primarily through CTF and under the requirements of Act 639 of 1978 (Port Authority Act).

Rail Freight

The state proper owns 650 miles of state-owned rail lines so the first priority is the management of those lines (vegetation control, bridge, culvert and crossing repairs). The second priority is freight preservation and development (capital improvements on state-owned rail infrastructure, enhance rail service in rural areas and small towns, and providing economic development financial assistance to rail users). In addition, we use the Michigan Rail Loan Assistance Program (MiRLAP). This is a revolving, no-interest loan program (typically a 10-year loan program), which assists the rail industry to

preserve and improve infrastructure. Lastly, we do a Local Grade Crossing Program that provides safety enhancement projects, local road project coordination, and crossing closure incentives. In support of these activities, we engage in grade crossing inspections (occasionally resulting in regulatory orders and compliance), and railroad employee safety issues. These activities are also funded at the Federal level through Highway Funds, which are available for safety/grade crossing projects, and at the State level through the CTF and MiRLAP repayments.

Funding Issues and Challenges

CTF issues and challenges can be divided into three basic categories: highly specified in statute as to purpose (investment strategy reflects statutory mandates), revenue sources are not constitutionally protected, and constrained appropriations. Act 51 mandates distribution of the CTF for debt service, administration of the fund, local bus operating assistance, a mandatory set-aside intercity passenger and freight, and requires specific amounts for specialized services, bus capital and municipal credit.

The CTF itself is funded through MTF contributions (Act 51 distributes 10% from the MTF to the CTF. Distribution is after certain specified deductions - actual amount closer to 8.06%), sales tax contributions (6%), and miscellaneous contributions.

In the last 2 years, FY 2004-2005, there have been a number of amendments to the Tax Act, which decreased the percentage of the sales tax that goes to the CTF. In FY 2004-2005 those resulted in a little over \$21 million from the gas tax to the general fund. In FY 2005 there was a 1 year reduction in the sales tax contribution to the CTF (an additional \$10 million. The FY 2006 budget, although it is not complete at this point, is predicated on an additional \$10 million reduction.

The impact of constrained CTF revenues or appropriations involves the Federal Transit Match. Federal grants are the primary source of funding for routine capital needs, such as bus replacement and facility improvement. Federal capital grants require a 20% non-federal match. Act 51 requires that the State provide 66 2/3% of the match. In practice, MDOT has always provided the entire 20%. In FY 2006 our match commitment is estimated at \$30 to \$35 million. The Executive Budget includes about \$16.3 million CTF appropriation for the match. At this point MDOT can only commit to the Act 51 required minimum.

Relative to local bus operating, eligible local operating costs have increased faster than the CTF appropriation. The State's share of eligible expenses has been declining every year.

Additional impacts of constrained CTF revenues: no state funding for transit improvement initiatives, such as regional demonstration projects, no state funds for high speed intercity rail capital improvements, reduced capacity to encourage rail freight-based economic development, and difficulty for MDOT and CTF recipients to develop long term strategies since CTF is not viewed as a stable.

In addition, there have been forced transit staff reductions. In FY 2005 there was a 20% reduction with another 20% likely in FY 2006. This will have significant performance

reductions in applying for federal aid for local providers, distributing state and federal grant contracts, and making payments to local providers. Importantly, the existing CTF revenue sources cannot support addition of rapid transit to Michigan in terms of match or increased demand for operating assistance.

Federal funding for aviation is fairly stable. Vision 100 actually increased funding for aviation activities by \$3.6 billion over the life the Authorization, which expires in 2007. Consistent with that, ASAP Bonds Authorization will expire in December 2007. The aviation fuel tax revenues are declining. The aviation fuel tax is 3 cents per gallon with a 1½ cent rebate to air carriers. This fuel tax has not changed since its inception in 1931. In 1995 the aviation fuel tax revenue generated about \$7.8 million. In FY 2004 it generated about \$7.7 million. If adjusted for annual inflation using the Detroit CPI, the buying power of 2004 revenues is reduced by 22%.

Mr. Abent asked for questions.

Commissioner Bender asked if, with ASAP expiring at the end of 2007, there are any plans for post-2007 with respect to this.

Director Jeff answered that as part of the revision of the State Long-Range Plan, aviation is part of it. As we identify the needs and the opportunities in the aviation arena, we will look at the question of “What will our financial needs be”, and as part of the series of recommendations that will be included in that Long-Range Plan, will be some recommendation with respect to revenues for aviation.

Commissioner Bender asked if we were likely to look at the 1½ cent rebate to air carriers.

Director Jeff answered that as of yet we have not laid out what we would do with respect to that. Clearly we are going to live within the revenues we have available right now. We hope that there will be an opportunity to work with the legislature in the future; at the moment they are not predisposed to it.

Commissioner Rosendall asked, regarding the 1½ cent rebate out of the 3 cents per gallon, if this qualifies any FBO's that do passenger service.

Mr. Abent answered no. The rebate applies only to carriers.

No other questions were forthcoming.

III. **DIRECTOR'S REPORT – DIRECTOR GLORIA J. JEFF**

Director Jeff updated the Commission on the FY 2006 budget signed by Governor Granholm this morning. The budget is for approximately \$3.4 billion to repair, rebuild and maintain Michigan's transportation system. It includes almost \$2.6 billion for road and bridge, about \$274.6 million for public transit, including about \$178 million for operating assistance. Within the letter that she sent back to the legislature with the signed budget, there is an inclusion of a veto of some 25 special interest projects. Those projects were line item vetoed because it represented an unprecedented level of earmarking, and it

represented an intrusion on the separation of the Executive Branch responsibilities (referring to the responsibilities of the Michigan State Transportation Commission to do project selection) and the Legislative Branch. In addition, there were several other vetoes the Governor included having to do with amendments by reference. While the Governor has signed it, there is a significant amount of work yet to be done.

Director Jeff asked for questions; none were forthcoming.

MDOT's Hurricane Katrina Assistance

Governor Granholm assigned MDOT as the lead agency for transportation related activities for the EMAC (Emergency Management Assistance Compact). EMAC provides assistance from one state to another. Team MDOT developed a transportation plan to assist evacuees in Michigan, and will continue to help evacuees who are now housed in Michigan. MDOT assisted with the EMAC projects by providing waivers for oversized and overweight haulers responding to hurricane relief efforts. The waivers allow haulers to move during normally restricted hours. MDOT contracted with an oil company to haul fuel for the law enforcement convoy that was deployed to Louisiana to fill an EMAC request. Additionally, MDOT hired a trucking company with flat bed trailers to haul 25 Department of Natural Resources (DNR) boats to Baton Rouge.

The department worked to keep Michigan's response on the move within all of state government (DMB, Human Services, MSP, DNR, Military and Veterans Affairs, and Public Health). Multi-Modal staff developed and managed a temporary demand-response transit system. MDOT coordinated with Amtrak, Greyhound and charter bus carriers to secure transportation services, partnered with MSP to facilitate air transportation, and worked with the Battle Creek Transit Authority to coordinate transportation of evacuees from the Battle Creek Air National Guard Base to Fort Custer. (This issue was later amended at the local level. School buses were used instead of transit resources.) Staff from Southwest Region and Aeronautics worked at Fort Custer to help manage transportation services for evacuees, while other volunteers answered the Hurricane Help Line.

Director Jeff asked for questions; none were forthcoming.

Commissioner Brosnan applauded all of those involved in providing assistance with this endeavor.

SAFETEA-LU Update

States are apportioned contract authority (CA) for specific programs through formulas established in law and through other provisions in the authorization act(s). Basically this means that you have a certain amount of money to actually spend that is made available. In order to directly control spending from one year to the next, obligation limitations are established for each year of the authorization period. In order to spend contract authority, states need obligation authority (OA). Since we can actually spend obligation authority (rather than contract authority), that is what determines how much federal funding is available for investments in our transportation infrastructure. When the estimates for federal revenue were generated for the Five Year Program, they assumed future OA/CA ratio would not significantly deviate from the historical average of 92.37%. In early

September, states were caught off guard, when the FHWA released this year's obligation authority, because the amounts were so low. Here in Michigan, the lower than expected obligation authority will pose challenges to the Five Year Program and attainment of pavement goals. The OA/CA ratio is expected to increase in the years ahead, but may not reach the historical average.

Hurricane relief spending for Katrina alone may total \$200 billion. The President has already indicated that the federal government will pay most of the costs. But a funding source, or off-setting spending reductions, has not been identified. Reclaiming all or a portion of the earmarked projects in SAFETEA-LU was one of the first sources of potential funding identified. There are over 6,000 project earmarks in SAFETEA-LU totaling more than \$24 billion. (Michigan has over 170 earmarked projects totaling more than \$643 million). A less talked about alternative to giving back earmarked funding is to simply divert a portion of obligation authority to the recovery effort. This would be even more problematic for states because it would keep earmarked projects at or near existing authorization levels and simply reduce program funding. Given the political dynamic (where members of Congress in leadership roles generally received more in project funding than rank and file members) and the difficult and lengthy negotiations needed to implement SAFETEA-LU, neither alternative appears too likely at this time. However, as pressure intensifies to find the funds necessary to pay for the recovery effort (from both Katrina and Rita) we may hear more about these ideas in the coming months.

There are a number of technical errors within the new bill given the size of SAFETEA-LU and the speed with which agreements were negotiated in the months leading up to its enactment. These mistakes will include incorrect section references, mis-specified funding levels and unworkable directives. States will need to be on guard because the bill is likely to deal with issues that shouldn't be considered "technical". In the waning days of the reauthorization effort, some issues were simply dropped because there was not enough time for the negotiators to reach agreement, some of these issues may re-surface. We have already seen legislation enacted to correct issues (that were largely unrelated to state highway programs) that need resolution before the end of the fiscal year.

A large portion of the "technical" corrections bill will deal with revisions to the projects specified in SAFETEA-LU. We have already identified a few project earmarks for which we will be seeking minor changes. Given the complexity of dealing with the hurricane recovery efforts, and the fact that many do not want to open SAFETEA-LU before funding for the efforts is identified, a technical correction bill is not likely until 2006.

Now that SAFETEA-LU is the law of the land, the administration will put forth their interpretation through the issuance of rules, guidance or best practices. FHWA, FTA and others will produce hundreds of implementing documents for existing programs and provisions that were modified such as Clean Air Conformity and projects affecting historic properties. New programs may also require implementing documents. Rulemaking by the federal bureaucracy is a formal process, and therefore adopted rules essentially carry the force of law. The publication of guidance and best practices is much less formal and generally less controversial. We have already seen interim guidance on planning, environment and air quality provisions.

Director Jeff asked for questions; none were forthcoming.

Future Commission Meetings and Workshops

October 2005: There will be a workshop regarding Warranty Guarantees. We have been working with the industry on a more collaborative approach that emphasizes superior pavement performance and all phases of the project delivery process – design, materials specifications, material handling, contracting, etc. The workshop will brief you on our work with the industry, and we will present a draft policy for Commission consideration.

November 2005: Denise Jackson will discuss the complete Five Year Multi-Modal Transportation plan.

Future meetings in 2006:

The State Long Range Plan (SLRP) presents Michigan's transportation vision, sets policy and direction, provides integrated systems strategies, is required by federal law (SAFETEA-LU—Title VI), builds on existing plan (which is entitled "State Long Range Plan: 2000-2025, Mobility is Security", and incorporates work from the two Michigan Transportation Summits). It is guided by department-wide planning team, has consultant team assistance to assist in various parts of the effort including the development of some 15 technical reports and the executive summary report, and is scheduled for May 2007 completion.

The *Detroit River International Border Crossing Study* involves two counties, one border, and one future crossing. This study will look at how to provide safe, efficient and secure movement of people and goods, new capacity, how to improve system connectivity, operations and processing capability, and how to provide reasonable and secure options. One of the key issues on the table is what will the governance of this new crossing be. Governance refers to how the crossing will be governed in all aspects: Ownership, operations, administrations, maintenance, and financing. Will it be privately or publicly owned? How will it be administered? Operated? It is one opportunity for the Commission to very significantly impact on this issue. This is **not** a decision that we get to make alone. Because this is a bi-national crossing it will be done in collaboration with the State of Michigan, U.S. Federal Government, Canadian Federal Government, and the Ontario Provincial Government.

We will walk through the basics of *ACT 51* and discuss how it will need to be coordinated with SAFETEA-LU. ACT 51 is the governing legislation for transportation in the state of Michigan.

Director Jeff asked for questions.

Chairman Wahby asked if there was a Commission member, Lowell Jackson, on the previous ACT 51 committee.

Director Jeff answered that there was previously an ACT 51 Blue Ribbon Committee. That committee completed its work and a new one has not been established yet. We are

currently working with the administration to see how the Governor would like to accommodate its make-up.

Chairman Wahby stated that his recollection is that the Commission made the appointments to the Committee, not the Governor.

Director Jeff stated that she was unsure.

Chairman Wahby stated that he wants the Commission Advisor to look into this along with the Director.

Director Jeff stated that this would be fine.

No other questions were forthcoming.

IV. **OVERSIGHT**

Commission/State Administrative Board Contracts/Agreements (Exhibit A) – Myron Frierson

Mr. Frierson stated that there are 35 amendments presented for approval, pending any questions.

Commissioner Brosnan stated that a number of the projects cited the source of funds being from the 2006 budget, and asked if this is the budget that was approved today.

Mr. Frierson answered yes.

Commissioner Brosnan stated that this seems a bit premature.

Mr. Frierson pointed out that October 1st is this weekend.

Commissioner Brosnan then asked, regarding item #10-Multi-Modal Specialized Service Program, if these are done outside of a regional transportation system that is provided by local governments or local agencies.

Mr. Frierson called on Sharon Edgar for a response.

Ms. Edgar answered that this program provides for assistance to agencies that provide transportation to the elderly and persons with disabilities. Providers range from non-profits agencies to the actual transit agency itself. In most cases the non-profits operate under the umbrella of the transit agency. The group at this time reflects those that are getting assistance at the time this comes up to the Commission. There is a list of over 100 providers that receive money under this program.

Commissioner Brosnan also asked, regarding item #32-Federal Aid Exchange MOU, if this is an example of an earmark project.

Mr. Frierson answered no. On occasion a unit of government feels it is to their advantage to exchange their federal aid with the department and utilize more state aid. Other examples of that are item #s 34 and 35.

No other questions were forthcoming.

Mr. Frierson asked for approval of Exhibit A.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Bender to approve Exhibit A. Motion carried on a unanimous voice vote.

Supplemental Commission/State Administrative Board Contracts/Agreements (Exhibit A) – Myron Frierson

Mr. Frierson stated that the project and agreement have been given for review. This item was brought to the Commission on a previous occasion. Certain performance measures had to be met; and they were. Those performance measures involved measures related to the number of stops, the number of people served, customer comments and response time. Pending any questions, Mr. Frierson asked for approval of Supplemental Exhibit A.

No questions were forthcoming.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brennan and supported by Commissioner Rosendall to approve Supplemental Exhibit A. Motion carried on a unanimous voice vote.

Bid Letting Pre-Approvals (Exhibit A-1) – Myron Frierson

Mr. Frierson gave a brief re-cap of the September 9th and September 23rd bid letting activities. For the year they department estimated \$888 million in state projects. Based on these two lettings we have let over \$890 million in state projects, therefore we have exceeded our goal. In the October meeting the Commissioners will be provided with a summary of bid letting statistics for FY 2005.

Mr. Frierson asked for questions.

Commissioner Brosnan pointed out that the reports show which projects have warranties from the previous bid letting, and asked if there is a way to show this for projects that are currently being let with warranties.

Mr. Frierson answered that the statement at the end (of the Letting Statistics Overview) is related to state projects for the upcoming October 7th letting.

Commissioner Brosnan acknowledged that it relates to the upcoming letting, however pointed out that in the initial part of the report Mr. Frierson is telling us about the September letting. She asked how many of those projects were warrantied.

Mr. Frierson answered that he could go back and include it in their next packet.

Commissioner Brosnan stated that it would be helpful to have that since it is a document they don't normally keep in their file until the next meeting.

Director Jeff asked for clarification on if the Commissioner wanted this information for the bid letting on October 7th.

Commissioner Brosnan answered no; the October 7th is there. What she wants is the September 2005 letting Mr. Frierson mentioned.

Mr. Frierson reiterated that she wants to know, of the 65 items, how many included warranties.

Commissioner Brosnan answered yes.

Mr. Frierson asked the Commission for approval of the bid items for the October letting in Exhibit A-1.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Bender to approve the October bid letting. Motion carried on a unanimous voice vote.

Letting Exceptions Agenda (Exhibit A-2) – John Polasek

Director Jeff noted that items 0509017, 0509020, and 0509049 are withdrawn from this exhibit.

Mr. Polasek noted that what remains is a single bid item (20% under the engineers' estimate), 7 other jobs with justification information (6 are state and 1 is local).

Mr. Polasek asked for questions.

Commissioner Brosnan asked, regarding item 0509084, if it is actually possible for this project to be completed in this construction season.

Mr. Polasek answered yes. All questions about the project have been answered and reviewed by the construction staff along with the traffic information that is needed.

Commissioner Brosnan further asked, given that we are paying extra for this to be done in a timely fashion to meet the deadline, if it doesn't meet the deadline whether or not there would be penalties.

Mr. Polasek answered that he would have to find out.

Commissioner Brosnan stated she would like to know the answer to that question.

Mr. Polasek asked the Commission for approval of Exhibit A-2.

Chairman Wahby entertained a motion. Motion was made by Commissioner Bender and supported by Commissioner Atkinson to approve Exhibit A-2. Motion carried on a unanimous voice vote.

Information Items (Exhibit A-3) – Myron Frierson

Mr. Frierson reported that this exhibit item is for information only. This item had a single bidder with the actual bid being below the engineers' estimate. There is no action required.

Chairman Wahby asked for questions; none were forthcoming.

Contract Adjustments (Exhibit B) – John Friend

Mr. Friend reported that the department finalized \$83 million worth of active construction work. There was a project that came in at about 5% over. This is something that we will have to continue to monitor. In previous months we have been between 2 and 3. Monitoring is necessary to see if this is an exception or the start of a trend. Before the Commission today are 4 MDOT projects and 7 local agency projects.

Mr. Friend asked for questions.

Commissioner Atkinson asked, regarding items 2005-111 (cities of Detroit and Dearborn, Wayne County) and 2005-119 (city of Detroit, Wayne County), if we had any legal remedies to explore with respect to the overruns.

Regarding item 2005-111 (miscommunication regarding electric manholes), Mr. Friend answered that his feeling is no, but he will explore this at greater length and get back to her.

Regarding item 2005-119 (contaminated soil), Mr. Friend answered that typically when they find contaminated soil in the right-of-way that is on a construction project, it becomes our responsibility, unless the prior owner has been identified and required to take corrective action as part of the purchasing process.

Mr. Friend further stated that he could get back to Commissioner Atkinson on this after exploring our legal options.

Commissioner Atkinson asked if there is a typical or regular set of clauses that are included within our contracts with the participating entities regarding these kinds of things that are discovered, such as contaminated soil, or does the department rely solely on the aspect of the law.

Mr. Friend answered that he has seen it both ways in the construction phase--when we did the remediation ourselves, and when they knew it was contaminated right away as part of the real estate investigation. However, he will do some research for her.

Director Jeff interjected that we have provisions in many of our contracts where we are acquiring right-of-way to provide protections against contaminated soils. We also, unfortunately, do have some contracts where there is no reason to suspect at the time of purchase. All of the Commissioners will be provided with a response on how we handle those.

Commissioner Atkinson asked if there is a policy to seek recovery in light of the fact that this involves almost \$7 million in overruns. Also, this is not the first time that this item has come before the Commission.

Mr. Friend asked for clarification as to whether her question pertained particularly to contaminated soils.

Commissioner Atkinson answered that she was not limiting her question to this; she was also referring to her prior question about the miscommunication on electric manholes.

Director Jeff stated that there was not a Commission policy explicit to that. There are Commission policies with respect to physical responsibility.

Mr. Howd interjected that with the changes to the environmental law, the first thing that has to be done is identify the actual person who contaminated. The Attorney General's office has been involved in situations where that is very difficult, especially if it has been on-going or cause by some business that may not even be in business anymore. Further, the way contaminated soil is removed for highway projects is in bulk. The department runs into a situation where it is not cost effective to develop a clean-up plan, and is subject then to whether or not all the costs were reasonable.

Commissioner Atkinson asked if, the fact that this involves the Dequindre Yard Bridge and prior owners of that property, have anything to do with the soil that was contaminated.

Mr. Friend answered yes.

Director Jeff interjected that we don't have comprehensive answers today, but what we would like to do is, before the Commissioner leaves, get all of her questions and provide a response to all of the Commissioners.

Commissioner Atkinson wondered whether the Commission needs to consider a policy to routinely refer projects to the Attorney General, or some other appropriate place, in situations where projects have come before them twice before and each time with more overruns. This would allow them to know that potential recovery and legal remedies are being covered.

Chairman Wahby asked Mr. Howd if a policy of this nature is necessary.

Mr. Howd answered that if the matter were referred to the Attorney General's office they could provide guidance.

Commissioner Rosendall stated that, regarding 2005-111, when he sees "miscommunication" for \$400,000, someone has to be held liable. It appears that the precedent has been set that the contractor comes back wanting more money and we always give it to him. Money is tight and we need to be looking closer at this. Commissioner Rosendall wondered if this is an error and omissions thing on their insurance.

Further, Commissioner Rosendall asked when 2005-119 would be done.

Mr. Friend answered that he has spoken with the region engineer and was told that, unless something pops up, this will be its last time in front of the Commission.

Chairman Wahby suggested to Director Jeff that, due to all the questions being asked, maybe something should be added to one of the workshops to cover topics of this nature. He further stated that when the Commissioners are asked to give approval of projects of this magnitude, they have to know what recourse is available.

Director Jeff responded that this will be done.

Chairman Wahby stressed concerns relating to the timing of requests by the Commission for reports or answers to questions. He recalled that last month there were questions regarding overruns, and said that when the Commission asks for information at, for example, this meeting, before the next meeting the answers should be provided. The Commissions' requests should be given some sort of priority because these are normally issues that are of great concern to the Commission. Sometimes the Commission feels that they are rubber stamping things that they don't fully understand, or they are rubber stamping things that they shouldn't be.

Director Jeff stated that it is her understanding that, on that particular request, there were supplemental requests made during the month by the Commission Advisor to members of Team MDOT. It was in acquiring that additional information that this has been delayed.

Chairman Wahby stressed that he wants this on a priority list.

Director Jeff stated that it is.

Chairman Wahby went on to say that the Commission wants this back as soon as they can because it is causing great concern. The Commission is entitled to have the requested information in order to make sound decisions. Further, Chairman Wahby stated that, from here on, if they have asked for information and it is not provided to the Commission Advisor so that he can forward to the Commissioners before the next months' meeting, there may be some "no" votes.

Director Jeff assured the Chairman that they will make every effort to do that, however asked that if there will be supplemental requests, that the Commission Advisor makes sure that the department Director is made aware of the supplemental requests so that they can be appropriately handled.

Chairman Wahby assured her that they will do that.

Commissioner Brosnan thanked Chairman Wahby for explaining some of the frustration that is felt amongst the Commission members, and suggested that one of the reports that would be crucial to their understanding of engineering cost overruns is a report that shows what percentage of work has been outsourced from MDOT over the past 3 to 4 years. This report should include the number of projects that have been contracted to each individual engineering firm, how much those contracts amount to, and whether those firms are Michigan based firms. This would give them an overall understanding of where our engineering contracting work is going, and knowledge of where the work is going when they read the line that says "Designed By" (which currently is filled in with the nebulous term "Consultant").

Director Jeff asked the Commissioner, so that they can be more responsive, for a definition of a Michigan based firm.

Commissioner Brosnan responded that it is her understanding that the department has a definition that they use for Michigan based firms. They are firms that have not only a headquarters here, but other firms that a significant number of employees here or who have incorporated here.

Director Jeff stated that if this is the definition that she would like the department to use, they will attempt to do that. They have some difficulties in that they are not allow, with respect to projects that involve federal funding, to provide a bias to Michigan based firms.

Commissioner Brosnan responded that she is not asking for a bias to Michigan based firms. What she wants is an understanding of where the work is going to that the Commission gets a better general perspective of whether or not we are using a predominance of Michigan based firms or a predominance of firms outside of Michigan.

Director Jeff reiterated that the department will provide the information requested.

Mr. Friend asked the Commission for approval of Exhibit B.

Chairman Wahby entertained a motion.

After much silence, Commissioner Brennan stated that he was not personally comfortable with, given the lack of information, approving Exhibit B. He commended Mr. Friend on his presentation of the information, and stated that it was nothing personal against him.

Chairman Wahby asked Director Jeff and Mr. Friend if these were projects already completed.

Director Jeff and Mr. Friend nodded in the affirmative.

Chairman Wahby stated that since the projects are already been completed, the only person who would be penalized are the contractors if this exhibit is not approved. Chairman Wahby asked Mr. Howd for verification that we still owe the contractors their money.

Mr. Howd answered yes.

Chairman Wahby stated that he does not disagree with the frustration felt by the Commissioners, but he does not feel it is fair to penalize the contractor at this point.

Commissioner Rosendall agreed with Chairman Wahby that it is not fair to penalize the contractor, and would normally not approve the exhibit at all. However, because he does not want to penalize the contractor, he will vote for approval. Commissioner Rosendall strongly stated that the next time he will not vote for approval.

Chairman Wahby asked for confirmation from all the members of the Commission that if information is not provided in a timely manner for next month, exhibits will not be approved.

All answered in the affirmative.

Mr. Friend stated that it would be helpful to him if questions they would like specific answers to were submitted ahead of time.

Chairman Wahby responded that Mr. Friend has a list of questions the Commission has asked for previously that they are still waiting on answers for. He urged Mr. Friend to get those answers to them in a timely manner before the next meeting; then they won't be sitting there debating whether or not to pay a contractor.

Chairman Wahby further clarified, and asked for acknowledgment from Director Jeff, that the Commission Advisor will submit the requests to the Director who will see to it that the appropriate personnel provides the Commission with the answers.

Director Jeff answered that the information requested by the Commission will be provided.

Motion was made by Commissioner Bender and supported by Commissioner Rosendall to approve Exhibit B. Motion carried on a voice vote with objections.

Six Month Financial Audit Follow-up Report (Exhibit C) – Jerry Jones

Mr. Jones stated that this report provides the details on audits that have been outstanding over 121 days since being issued. This month's report contains 16 audits, 11 fewer than we had in the previous six-month report. The report indicates that the department is working to address the audits, working with the Auditor's office, the consultants and local agencies involved to close them.

Mr. Jones recommended that the Commission accept this report and asked for questions; none were forthcoming.

Mr. Jones then called on Commissioner Brosnan for her response.

Commissioner Brosnan stated that she has reviewed the report along with the Department's response, and recommends that the Commission accept the report.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Atkinson to approve Exhibit C. Motion carried on a unanimous voice vote.

Six Month Internal Audit Follow-up (Exhibit D) – Jerry Jones

Mr. Jones stated that this report reflects the status of the departments' implementation of proposed recommendations. In this follow-up the remaining outstanding report within this reporting cycle, as well as the proposed recommendations, is closed. The departments' action is addressing the said recommendation.

Mr. Jones recommended that the Commission accept this report and asked for questions; none were forthcoming.

Mr. Jones then called on Commissioner Brosnan for her response.

Commissioner Brosnan stated that she has reviewed the report along with the Department's response, and recommends that the Commission accept the report.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Atkinson to approve Exhibit D. Motion carried on a unanimous voice vote.

Audit Report-MDOT's Procurement Card Process (Exhibit E) – Jerry Jones

Mr. Jones stated that this report determined that overall, the department operated in substantial compliance with Commission department and DMB policies and procedures. The report has findings and recommendations in regard to the departments' follow-up procedures, the use of the redi-mix/bituminous procurement cards, and compliance with Public ACT 51. It is believed that the recommendations in the report will strengthen the departments' internal control structure in regards to these processes. The department's response reflects concurrence with the proposed recommendations and is taking action to implement them.

Mr. Jones recommended that the Commission accept this report and asked for questions; none were forthcoming.

Mr. Jones then called on Commissioner Brosnan for her response.

Commissioner Brosnan stated that she has reviewed the report along with the Department's response, and recommends that the Commission accept the report.

Chairman Wahby entertained a motion. Motion was made by Commissioner Brosnan and supported by Commissioner Atkinson to approve Exhibit E. Motion carried on a unanimous voice vote.

V. **APPOINTMENTS**

Asset Management Council Appointment/Re-Appointments – Frank E. Kelley

Mr. Kelley asked the Commission to approve the appointment of Mr. Spencer Nebel (to fill the vacancy of Tom Wiczorek to the end of 2005, then a term of 1/1/06 to 12/31/08), and the re-appointments of Mr. Gerald Richards (1/1/06 to 12/31/08), and Mr. Carmine Palombo (1/1/06 to 12/31/08) to the Asset Management Council.

Chairman Wahby entertained a motion for approval. Motion was made by Commissioner Atkinson and supported by Commissioner Brosnan to approve the appointment of Spencer Nebel. The motion carried on a unanimous voice vote.

Chairman Wahby entertained a motion for approval. Motion was made by Commissioner Brennan and supported by Commissioner Rosendall to approve the re-appointment of Gerald Richards. The motion carried on a unanimous voice vote.

Chairman Wahby entertained a motion for approval. Motion was made by Commissioner Bender and supported by Commissioner Brosnan to approve the re-appointment of Carmine Palombo. The motion carried on a unanimous voice vote.

VI. **PRESENTATIONS**

FY 2005 Accomplishments/FY 2006 Program – Denise Jackson, Statewide Planning

FY 2005 ACCOMPLISHMENTS:

The FY 2005 Program focused on making government effective and inclusive, providing a safe transportation system, improving air quality and protecting natural resources, and supporting job creation and economic growth. Team MDOT successfully delivered a balanced 2005 program, and delivered commitments in spite of a late reauthorized federal transportation bill. Investments totaled nearly \$1.79 billion (Highway Program level was \$1.3 billion, Multi-Modal Program level was \$490 million, and Preserve First total was \$112 million (8.6%) of the highway program).

A number of things have been done to expand partnering efforts in order to be more inclusive. These include holding the 2nd Transportation Summit, approval of the Context Sensitive Solutions Policy in March, 2005, Listening Sessions for the Five Year Transportation Program, the Call for Projects Process, statewide seminars on Pilot Safety, and a joint effort with Michigan Travel Bureau and others to promote Michigan tourism at Chicago's Union Station.

We are continuing to provide a safe transportation system. We implemented a Comprehensive Safety Program, the State trunkline fatality rate is lower than the goal that was set, MDOT received the 2005 Safety Leadership award from AASHTO, and the

Air Service Program issued 10 new capital improvement and equipment grants that emphasized safety and security.

To protect natural resources and improve air quality we worked with state and federal agencies to ensure minimal disruption to the ecosystem. We have constructed 220 acres of wetlands, are continuing the Congestion Mitigation and Air Quality (CMAQ) Program, which expanded to 25 counties, continuing the Courtesy Patrol on Southeast Michigan freeways, and using CMAQ funds to promote use of public transit.

The program has provided economic development opportunities. Our nearly \$1.3 billion capital program investment is supporting over 26,000 jobs throughout Michigan. The Economic Development Office has provided over \$62 million to build commercial routes, relieve congestion, bring forest products to market, and generate private investment and job creation.

MDOT provided Hurricane Katrina evacuee support. The department arranged transportation services to meet the needs of evacuees at Fort Custer, and provided services to evacuees leaving Michigan to reunite with family and friends.

The Highway Program was able to award 92% of its announced Road, Bridge, and Passing Relief Lane Projects as well as 3 Capacity Improvement projects (I-96 at 36th Street in Kent County, M-59 at Squirrel Road in Oakland County, and I-75 at I-96 in Detroit). In addition, \$21 million was committed to 69 trunkline and local enhancement projects (27 miles of roadway streetscape were improved, 117 miles of pedestrian/bicyclist facilities were created, 4 roadside parks were refurbished, and 3 historic bridges were preserved). Thirty of the 69 enhancement projects were paired with other infrastructure improvements to minimize construction impact and take advantage of economies of scale.

Under the Aviation, Bus, Marine/Port and Rail Programs, 110 Airport Improvement projects were contracted in FY 2005 (totaling roughly \$42 million). Sixty percent of eligible airports achieved all weather accessibility. Approximately \$162 million was dedicated to local bus operating assistance. Traverse City has begun replacing BATA diesel buses with hybrid electric buses. Our State-owned rail system rehabilitated 22.5 miles of track and 17 crossings, inspected 36 bridges, and rehabilitated 20 bridges. Through July, Michigan rail passenger service revenue was up 15% from the same period in 2004.

Finally, MDOT has been celebrating 100 years in transportation. Special events were held throughout the year to share transportation history with employees and public. Ms. Jackson passed out to each Commissioner a complimentary copy of *Bridget and Little Mac's Birthday Trip*, a children's book created by MDOT's own employees. The author is Michelle Myers, Intermodal Policy Division, Planning; and the illustrator is Brian Whitfield, Graphics. The story is about Little Mac and his younger sister, Bridget, who decide to visit their Grandma Dot on her 100th birthday. Their journey highlights many modes of transportation and valuable safety lessons. **This publication was done 100% with donations; no funds from the general budget of MDOT were used.**

FY 2006 PROGRAM:

This is the first year MDOT will develop a transportation program under the new transportation legislation (SAFETEA-LU). An estimated \$6.5 billion will be available to Michigan from 2005-2009 for highways and transit (an annual average of \$1.3 billion in federal funding). There is \$643 million in congressionally designated projects (\$199 million for MDOT highway projects, and \$444 million for local agency projects). Funding for earmarks are not available in the first years. The rate varies from 10-25% per year. In the FY 2006 program, \$22 million will be for MDOT projects. Some of the effects of SAFETEA-LU which will directly influence the FY 2006 program include: increased funding for safety, increased funding and flexibility for CMAQ, preventive maintenance work on bridges now eligible for federal aid, new formula programs for border infrastructure and safe routes to school, and proactivity with the Five Year Program.

The FY 2006 program continues the course set by the Governor, the Transportation Commission and as outlined in the Five Year Program. It implements the strategies and goals that have been approved, emphasizes system preservation and providing safe mobility, focuses on making government effective and inclusive, and supports economic development and improved quality of life. Preservation and safety of the system are highest priorities. There will be \$975 million dedicated to preserve and maintain roads and bridges. Roughly half of road capacity improvement investments will preserve existing adjacent lanes. A significant portion of aviation and transit programs are dedicated to existing infrastructure. Additionally, the comprehensive safety program is being expanded.

The department's Transportation Program investment plan totals nearly \$1.9 billion (aviation at \$163 million; bus, marine/port and rail at \$276 million; and highways at nearly \$1.45 billion). These investments will have positive influences on Michigan's economy, job creation and through economic development.

Providing a safe and secure transportation system continues to be a key element. We will be providing railroad grade crossing safety improvements, an expansion of the Comprehensive Highway Safety Program, and a continuation of the All Weather Airport Access Program which is expected to exceed its current 60% eligibility rate.

Preserving and maintaining roads and bridges accounts for \$974 million of the Highway Program. This includes more than 440 miles of improved roads, the repair of over 310 bridges, and the management of 1,430 miles of good/fair roads with the CPM Program.

This is the fourth year of the Preserve First Initiative and has \$132 million dollars dedicated towards it, representing 9% of the \$1.444 billion Highway Program. We will continue to utilize a mix of fixes to effectively manage the system (rehabilitation, reconstruction, resurfacing, routine and preventive maintenance). A total of \$220 million will be dedicated to things such as safety, TEDF, State Programs, and Federal Programs.

The Transportation Enhancement Program will also continue. Investments will be made for runway rehabilitation, bus replacement, and railroad track replacement and rehabilitation.

In regards to expanding the system, especially as it relates to economic development, we will continue with the TEDF Program. Investment in highway capacity improvements includes I-75 at Ambassador Bridge, M-24 at Whiting and Lapeer Road, and the I-696 at Franklin Interchange. Facility improvements include intermodal stations and airport terminals. Also continuing will be our Michigan Rail Loan Assistance Program.

In summary, we will be investing \$1.88 billion in the Transportation System for economic benefit and improved quality of life. Our FY 2006 program is fiscally responsible, we are committed to delivering the program as promised, the program implements the strategy approved in January (2005) as part of the Five Year Program, and we will continue to assess federal and state funding. We will be back in November with the **draft** 2006-2010 Five Year Program.

Ms. Jackson asked for questions.

Commissioner Brosnan asked, regarding the hybrid bus program in Traverse City, if there were any incentives in the program for the change to hybrid buses, was it done solely on their own.

Ms. Edgar answered that it was a decision that was made locally. The City received congressional funds that were specifically earmarked for it.

Commissioner Brosnan then asked if the department has discussed offering any incentives for any of our organizations that do bus transportation.

Director Jeff answered that the funding source that we normally would have had to do regional demonstration projects, we no longer have.

Commissioner Brosnan reiterated that she's asking about incentives (financial, etc.), not demonstration projects.

Director Jeff answered no.

Commissioner Brosnan also asked what other benchmarks are used in assessing our transportation services.

Ms. Jackson answered that we look at, among other things, the number of projects. Because some of the bids have been lower, we have been able to add even more programs than what we had anticipated.

Director Jeff interjected that the most consistent performance measure that the Commission has established for the department is that by 2007 we have 85% of the non-trunkline and 95% of the trunkline in what is classified as "good condition". Further, by 2008, have comparable achievement with respect to the bridge program.

No other questions were forthcoming.

VII. **PUBLIC COMMENTS**

Chairman Wahby asked if anyone wanted to address the Commission.

Mr. Allan Seger, of Ann Arbor, gave comments explaining his frustration with the amount of highway mowing, timing of the traffic light at Hewlett Road (Fairfield Heights subdivision), guardrails, and general spending of funds.

Chairman Wahby responded that Mr. Seger's points were well taken. MDOT puts a lot of time, effort and money into safety and all the studies that are being done. There is a lot of background that is considered before a light is installed, or any other work done.

Mr. Seger asked what the benefit of mowing the medians was.

Chairman Wahby answered that the benefit is that it needs to be mowed from an appearance standpoint, safety standpoint, among other reasons.

No other public comments were forthcoming.

Chairman Wahby asked if any member of the Commission had comments.

Commissioner Rosendall asked if any information would be given regarding the warranties.

Director Jeff stated that there would be a full workshop on it after the October meeting.

ADJOURNMENT

There being no further business to come before the Commission, the Chairman declared the meeting adjourned at 11:30 a.m.

The next full meeting of the Michigan State Transportation Commission will be held in Lansing, Michigan, on October 27, 2005, commencing at the hour of 9:00 a.m.